

David L. Mazaroli (DM-3929)  
Attorney for Plaintiff  
11 Park Place – Suite 1214  
New York, NY 10007-2801  
Tel. (212)267-8480  
Fax. (212)732-7352

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
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MITSUI SUMITOMO INSURANCE CO. LTD. : ECF CASE  
  
Plaintiff, : 07 Civ. 3874 (CM)  
  
- against - :  
  
EVERGREEN MARINE CORPORATION; :  
UNION PACIFIC RAILROAD COMPANY; :  
  
Defendants. :  
-----X

**REPLY AFFIDAVIT OF DAVID L. MAZAROLI  
IN FURTHER SUPPORT OF PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN  
OPPOSITION TO DEFENDANTS' CROSS-MOTION**

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

David L. Mazaroli, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before this Honorable Court and the attorney of record for plaintiff Mitsui Sumitomo Insurance Co. Ltd. ("Mitsui"). As such I am familiar with the facts, pleadings and procedural history of this litigation.

2. This affidavit is respectfully submitted in further support of plaintiff's motion for partial summary judgment and in opposition to the cross motion for partial summary judgment filed by defendants Union Pacific Railroad Company ("UP") and Evergreen Marine Corporation ("Evergreen").

Reply Affidavit of David L. Mazaroli  
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Signature and Execution Page

3. The purpose of this affidavit is to present copies of the below-referenced exhibits which are referred to in plaintiff's reply and opposition memorandum of law and plaintiff's response to defendants' Rule 56.1 statement. The exhibits follow in numerical order the sixteen exhibits submitted with my affidavit sworn to on February 4, 2008.

5. Annexed hereto as **Exhibit 17** is printout of an excerpt from the Port of Los Angeles internet website which discusses the on-dock railyard operated by Evergreen America Corp. ([http://www.portoflosangeles.org/facilities\\_Rail.htm](http://www.portoflosangeles.org/facilities_Rail.htm))

6. Annexed hereto as **Exhibit 18** is a printout of an excerpt from Evergreen's internet website discussing its intermodal rail interchange terminal at the Port of Tacoma. ([http://64.233.169.104/search?q=cache:7ExcrdNcm8sJ:www.evergreen-marine.com/tuf1/jsp/TUF1\\_Html.jsp%3Fpage%3DTBN1\\_050128.htm+evergreen+marine+on-dock+rail&hl=en&ct=clnk&cd=3&gl=us](http://64.233.169.104/search?q=cache:7ExcrdNcm8sJ:www.evergreen-marine.com/tuf1/jsp/TUF1_Html.jsp%3Fpage%3DTBN1_050128.htm+evergreen+marine+on-dock+rail&hl=en&ct=clnk&cd=3&gl=us))



David L. Mazaroli

Sworn to before me this  
26 day of March 2008



Notary Public

JOEL BRAZILLER  
Notary Public, State of New York  
No. 02BR4653562  
Qualified in Kings County  
Commission Expires November 30, 2009